

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

HENRY B. HARRIS,

Petitioner,

v.

**CIVIL ACTION NO. 3:13-CV-161
(JUDGE GROH)**

THOMAS McBRIDE, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull [Doc. 26]. On November 6, 2013, the *pro se* petitioner, Henry B. Harris, filed a petition pursuant to 28 U.S.C. § 2254. The Court referred this matter to United States Magistrate Judge John S. Kaull for initial screening and a report and recommendation in accordance with Rule 2 of the Local Rules of Prisoner Litigation Procedure. Magistrate Judge Kaull filed his report and recommendation on May 23, 2014. In that filing, the magistrate judge recommended that this Court deny Petitioner's application under 28 U.S.C. § 2254 and deny Petitioner's other pending motions as moot.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the

findings or recommendation to which no objections are addressed. Thomas v. Arn, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and Petitioner's right to appeal this Court's Order. 28 U.S.C.

§ 636(b)(1); Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). The report and recommendation specifically warned the parties that their failure to object to the recommendation would result in the waiver of any appellate rights they might otherwise have on this issue. Objections to Magistrate Judge Kaull's report and recommendation were due within fourteen (14) days of being served with a copy of the same, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). The docket reflects that Petitioner accepted service on May 29, 2014. [Doc. 27]. Neither party filed objections to the report and recommendation. Accordingly, this Court will review the report and recommendation for clear error.

Petitioner filed his 28 U.S.C. § 2254 petition alleging that the State of West Virginia denied him the right to appeal his conviction in violation of the United States Constitution. First, Magistrate Judge Kaull found that Petitioner filed an appeal and the West Virginia Supreme Court denied the same and confirmed Petitioner's conviction. Therefore, Magistrate Judge Kaull recommended that petitioner's attempt to secure the Court's assistance in having his appeal finalized is moot. Second, in regards to Petitioner's attempt to raise alleged inaccuracies in his trial transcripts as grounds for habeas relief, Magistrate Judge Kaull recommended that his claim fails. Specifically, Magistrate Judge Kaull found that Petitioner alleged an error without asserting how that

error prejudiced his statutory right to appeal. Finally, in reviewing the West Virginia Supreme Court of Appeals' opinion denying Petitioner's appeal, Magistrate Judge Kaull found that it was "neither contrary to, nor does it involve an unreasonable application of, clearly established Federal law." Therefore, Magistrate Judge Kaull recommended that Petitioner failed to state a claim for relief under 28 U.S.C. § 2254.

Upon reviewing Magistrate Judge Kaull's report and recommendation, this Court finds no clear error. Therefore, it is the opinion of this Court that the magistrate judge's

Report and Recommendation [Doc. 26] should be, and is, hereby **ORDERED**

ADOPTED for the reasons more fully stated in the magistrate judge's report.

Accordingly, the Court hereby **DENIES** Petitioner's application under 28 U.S.C. § 2254

[Doc. 1], and **DISMISSES** it **WITH PREJUDICE**. Accordingly, this matter is hereby


ORDERED STRICKEN from the active docket of this Court. Pursuant to Federal Rule

of Civil Procedure 58, the Clerk is **DIRECTED** to enter judgment for Respondent.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* petitioner, certified mail, return receipt requested.

DATED: June 17, 2014


GINA M. GROH
UNITED STATES DISTRICT JUDGE